

the estimated cost based on an approved schedule of payment will be deposited with the installation performing the work before any obligations or expenses in connection with the work are incurred; and when funds are being deposited on an approved schedule no obligations or expenses will be incurred in connection with the work in excess of funds on deposit.

(3) *Private concerns and foreign governments.* Funds will be deposited in advance of the work as required in paragraph (e)(2) of this section. Charges shall include a surcharge of 15 percent of all applicable costs, except under the following conditions.

(i) When the final product will directly contribute to a specific planning, design, or construction activity which derives its principal support from Federal funds in the form of a grant or otherwise.

(ii) Where an exception is granted based on a direct benefit to the Government. Adequate justification, outlining the direct benefits which are expected to accrue to the Government, will be forwarded to HQDA (DAEN-CWE-DC) Washington, DC 20314, for review and approval prior to deletion of the surcharge.

(f) *Authority.* The following delegations of authority to perform laboratory investigations and materials testing apply.

(1) *Division materials laboratories.* Division Engineers are delegated the authority to approve laboratory work for Federal, State and local units of government when the total estimated cost of each investigation or test project is \$15,000 or less. Division Engineers are also delegated the authority to approve laboratory work for private firms and foreign Governments when the total estimated cost of each investigation or test project is \$5,000 or less. Approval is required when the estimated or actual costs exceed those delegations of authority. Requests for approval shall be addressed to DAEN-CWE-DC.

(2) *Hydraulic laboratories.* Division Engineers and District Engineers operating hydraulic laboratories or hydraulic model laboratories are delegated the authority to approve laboratory work for others within the same limitations and in accordance with the

same procedures as apply to Division Materials Laboratories.

(3) *Inter-Agency Sedimentation Project, St. Anthony Falls Laboratory, University of Minnesota, Minneapolis, Minnesota.* The District Engineer, St. Paul is authorized to perform work required in procurement, testing and calibration of specialized sediment sampling equipment developed at the Inter-Agency Sedimentation Project. Equipment of this nature will be made available to Federal, State and local governmental agencies at cost. The District Engineer, St. Paul, is also authorized to approve the performance of testing and calibration work for U.S. private firms that fabricate this specialized equipment for commercial sale when the estimated cost for services of Corps personnel is \$5,000 or less for a single order. Approval is required when the estimated single order cost for a private firm exceeds \$5,000 and when the total cost of work during a fiscal year for any one private firm exceeds \$15,000. Requests for approval shall be addressed to HQDA (DAEN-CWE-HY) Washington, DC 20314.

(g) *Reports of testing results.* Final reports of results will be submitted in accordance with instructions provided by the sponsoring organization, with two copies to HDQA (DAEN-CWE-DC) Washington, DC 20314.

Copies of reports of scientific or technical activities will be transmitted to the Defense Documentation Center as required by AR 70-31. (RCS OSD-1366)

(Sec. 3012, 70A Stat 157; 10 U.S.C. 3012)

[44 FR 50338, Aug. 28, 1979]

§ 209.345 Water resource policies and authorities.

REIMBURSEMENT FOR ADVANCE NON-FEDERAL PARTICIPATION IN CIVIL WORKS PROJECTS

(a) *Purpose.* This regulation gives general instructions on use of section 215 of the Flood Control Act of 1968 (Pub. L. 90-483) to reimburse a non-Federal public body for construction of part of an authorized Federal project, part of an authorized Federal project. It establishes general policies, outlines procedures to be followed in reaching

an agreement with an eligible non-Federal entity, and provides guidance on the provisions of such an agreement. All authorized projects are subject to this Act and regulation.

(b) *Applicability.* This regulation applies to all field operating agencies having Civil Works responsibilities.

(c) *References.* (1) Section 215, FCA of 1968 (Pub. L. 90-483, 42 U.S.C. 1962d-5a.). (APP A, this regulation).

(2) Senate Document No. 10, 90th Congress, 1st Session, "Study of Federal Reimbursement Policy for Work by States and other Non-Federal Entities on Authorized Water Resources Projects."

(3) Section 221, FCA of 1970 (Pub. L. 91-611, 42 U.S.C. 1962d-5b).

(4) ER 405-2-680.

(5) ER 1140-2-301.

(6) ER 1180-1-1, (para. A-310, App. A).

(d) *General policy.* (1) The specific limitations put upon the allotment of funds authorized by section 215 indicate that only limited use should be made of the authority. It will, therefore, be Corps of Engineers policy to restrict the use of this authority to cases that meet all of the following conditions:

(i) The work, even if the Federal Government does not complete the authorized project, will be separately useful or will be an integral part of a larger non-Federal undertaking that is separately useful;

(ii) The work done by the non-Federal entity will not create a potential hazard;

(iii) Approval of the proposal will be in the general public interest;

(iv) Only work commenced after project authorization and execution of an agreement pursuant to this Regulation will be eligible for reimbursement or credit;

(v) Proposed reimbursement will not exceed the amount that the District Engineer considers a reasonable estimate of the reduction in Federal expenditures resulting from construction of the project component by the non-Federal entity.

(2) Before finally approving any agreement under section 215, the Chief of Engineers will inform the Secretary of the Army and the Chairman (Senate and House), Subcommittee on Public

Works, Committee on Appropriations of the proposed arrangements. The Chief of Engineers will not sign an agreement until Secretarial and Committee concurrences are obtained.

(3) Section 215 authority will not be used where it might appear to circumvent the intent of Congress. It will not, for example, be used to initiate work on projects to which Congressional committees have indicated general opposition or refused to provide requested funds, or to accelerate portions of work on which construction has already been commenced by the Federal Government.

(4) Section 215(f) authorizes a specific allotment of funds to reimburse non-Federal entities for work accomplished under the Section. No allotment has been established, nor is one proposed at this time. Until one is, and firm procedures are established, any agreement with a non-Federal entity shall call for reimbursement, or for credit against required contributions, only when construction funds for the Federal project which incorporates the part constructed by the non-Federal entity are appropriated and allocated.

(5) The non-Federal entity will normally be required to develop the design memorandum, engineering plans, and specifications for the work it proposes to undertake. Subject to policies established in ER 1140-2-301, as modified in paragraph (e)(2) of this section, the District Engineer may provide engineering services with funds advanced by the non-Federal entity if he determines it to be impracticable for the entity to obtain the services elsewhere. Non-Federal engineering and overhead costs for the part of the Federal project that the non-Federal entity proposes to construct will be part of the reimbursement agreement.

(6) The agreement shall include local cooperation items required by the project authorization and by Section 221, FCA of 1970.

(7) Reimbursement of non-Federal work under Section 215 is not applicable to small projects authorized under the general authority of Section 107, Pub. L. 86-645, as amended. (33 U.S.C. 577); Section 205, Pub. L. 858, 80th Congress, as amended, (33 U.S.C. 701s); and Section 103, Pub. L. 87-874, as amended,

(33 U.S.C. 426g); and Section 14, Pub. L. 79-526 (33 U.S.C. 701r).

(e) *Procedures.* (1) Non-Federal entities desiring reimbursement under Section 215 for constructing part of an authorized Federal project should confer with the District Engineer and submit a written proposal to him. This proposal will form the basis for consulting, as needed, with OCE and for deciding whether the proposal meets the policy criteria of paragraph (d) of this section, and whether to continue under the procedures below and what sequence to follow.

(2) If Federal preconstruction planning funds are not available to the project and it is considered impractical for the non-Federal entity to prepare a partial design memorandum and/or plans and specifications, the draft agreement may propose that this work be accomplished by the Corps of Engineers through an advance of non-Federal funds for this purpose. Certain advances of funds will be necessary, in any event, to cover other costs which are required on the part of the Corps of Engineers. Paragraph 11 of ER 1140-2-301 requires that requests to the Appropriations Committees for approval of advances of funds should normally be submitted to the Committees by non-Federal interests outside of Corps of Engineers channels. An exception to this procedure will be made in the case of Section 215 proposals in that the request for approval of advances will be made a part of the request to the committees for approval of the overall arrangement referred to in paragraph (d)(2) of this section. Thus, proposed advances of funds for the following purposes will be clearly set forth in the draft agreement: (i) Preparation of a partial design memorandum and/or plans and specifications (ii) corps review of design scheduled for accomplishment by local interests, and (iii) periodic and final inspections.

(3) The District Engineer will submit for review an unsigned draft agreement to OCE. All agreements will be prepared for the signature of the Chief of Engineers.

(4) The District Engineer will be notified of any changes in the draft agreement that the Chief of Engineers may require, and will negotiate a final

agreement with the non-Federal entity. After signature of the agreement by the non-Federal entity, the District Engineer will forward three copies to HQDA (DAEN-CWO-C) WASH DC 20314, for signature by the Chief of Engineers.

(5) Upon receipt from OCE of the full executed agreement, the District Engineer will transmit the signed agreement to the non-Federal entity.

(6) The Division Engineer will review the (partial) design memorandum, and, if it meets the relevant criteria in paragraph (d)(1) of this section, will submit it to OCE with the recommendations on whether or not the work may proceed subject to reimbursement under the agreement.

(7) The Division Engineer will approve plans and specifications.

(8) The non-Federal entity will award contract.

(9) The District Engineer will conduct periodic and final inspections.

(10) Upon completion of the local work, the District Engineer will certify the cost data, and that performance has been in accordance with the agreement.

(f) *Agreements.* Agreements under Section 215 should follow the general format presented in paragraph (c)(6) of this section, adapted as warranted by the specific case. Each agreement shall:

(1) Expire 3 years after the date of execution if the non-Federal entity has not commenced the work contemplated by the agreement.

(2) State the time allowed for completion of the work. A reasonable time shall be allowed, but normally not over 2 construction seasons.

(3) Fully describe the work to be accomplished by the non-Federal entity and specify the manner in which it will be carried out.

(4) The agreement will specify that reimbursement by the Federal Government will not exceed \$1,000,000.

(5) Provide for necessary review of designs, plans, and specifications, by the District Engineer.

(6) Provide for examination and review of proposed contracts and for inspection of the work by the District Engineer for conformance with the terms of the agreement.

(7) State fully the basis on which reimbursement or credit shall be determined, and provide for the final adjustment when the balance of the Federal project is constructed. If the improvement proposed by the non-Federal entity includes work that will not become a part of the Federal project, the means of determining the part eligible for reimbursement shall be fully defined.

(8) State that such reimbursement shall depend upon appropriation of funds applicable to the project and shall not take precedence over other pending projects of higher priority.

(9) Specify that reimbursement or credit for non-Federal work shall apply only to that work undertaken after execution of the agreement. The term "work" shall include advance engineering and design as well as actual construction.

(10) State that the agreement is not to be construed as committing the United States to reimbursement if the Federal project is not undertaken, or if the Federal project should be modified in such a way that the work performed by the non-Federal entity does not constitute a part thereof.

(11) Contain applicable equal employment clauses from Armed Services Procurement Regulations.

(g) *Nature and amount of reimbursement.* (1) The non-Federal entity may be reimbursed by a payment of cash, or, preferably, by reductions in any non-Federal contribution to the Federal project that may have been required by the legislation authorizing it, or by a combination of cash and such reductions.

(2) The amount of reimbursement shall equal the approved expenditures made by the non-Federal entity for work that would have been accomplished at Federal expense if the entire project were carried out by the Corps of Engineers, and as covered in the agreement under paragraphs (f) (7) and (10) of this section. The amount of reimbursement will not exceed, however, the amount that the District Engineer finds to be a reasonable estimate of the reduction in Federal expenditure resulting from construction by the non-Federal entity.

APPENDIX A TO PART 209—PUBLIC LAW 90-483, 90TH CONGRESS, S. 3710, AUGUST 13, 1968

An act authorizing the construction, repair, and preservation of certain public works on rivers and harbors for navigation, flood control, and for other purpose. (82 Stat. 731).

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Sec. 215. (a) The Secretary of the Army, acting through the Chief of Engineers, may, when he determines it to be in the public interest, enter into agreement providing for reimbursement to States or political subdivisions thereof for work to be performed by such non-Federal public bodies at water resources development projects authorized for construction under the Secretary of the Army and the supervision of the Chief of Engineers. Such agreements may provide for reimbursement of installation costs incurred by such entities or an equivalent reduction in the contributions they would otherwise be required to make, or in appropriate cases, for a combination thereof. The amount of Federal reimbursement, including reductions in contributions, for a single project shall not exceed \$1,000,000.

(b) Agreements entered into pursuant to this section shall (1) fully describe the work to be accomplished by the non-Federal public body, and be accompanied by an engineering plan if necessary therefor; (2) specify the manner in which such work shall be carried out; (3) provide for necessary review of design and plans, and inspection of the work by the Chief of Engineers or his designee; (4) state the basis on which the amount of reimbursement shall be determined; (5) state that such reimbursement shall be dependent upon the appropriation of funds applicable thereto or funds available therefor, and shall not take precedence over other pending projects of higher priority for improvements; and (6) specify that reimbursement or credit for non-Federal installation expenditures shall apply only to work undertaken or Federal projects after project authorization and execution of the agreement, and does not apply retroactively to past non-Federal work. Each such agreement shall expire three years after the date on which it is executed if the work to be undertaken by the non-Federal public body has not commenced before the expiration of that period. The time allowed for completion of the work will be determined by the Secretary of the Army, acting through the Chief of Engineers, and stated in the agreement.

(c) No reimbursement shall be made, and no expenditure shall be credited, pursuant to this section, unless and until the Chief of Engineers or his designee, has certified that the work for which reimbursement or credit is